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**Paragon Custom Homes, Inc. and Carpenters Union  
Local 587.** Case 18-CA-17312

October 29, 2004

**DECISION AND ORDER**

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND  
WALSH

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge filed by the Union on May 28, 2004, the General Counsel issued the complaint on August 27, 2004, against Paragon Custom Homes, Inc., the Respondent, alleging that it has violated Section 8(a)(1), (3), and (5) of the Act. The Respondent failed to file an answer.

On September 28, 2004, the General Counsel filed a Motion for Default Judgment with the Board. On September 30, 2004, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Default Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was filed by September 10, 2004, all the allegations in the complaint would be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated September 14, 2004, notified the Respondent that unless an answer was received by September 21, 2004, a motion for default judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's motion for default judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a South Dakota corporation, has been engaged in the manufacture and sale of custom modular homes at its facility located in Madison, South Dakota.

During the calendar year ending December 31, 2003, a representative period, the Respondent, in conducting its business operations described above, purchased and received at its Madison, South Dakota facility, goods and services valued in excess of \$50,000 directly from sources located outside the State of South Dakota, and sold and shipped goods and services valued in excess of \$50,000 from its Madison, South Dakota facility directly to points located outside the State of South Dakota.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that Carpenters Union Local 587 (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Thomas Coburn	Owner
David Carlson	Plant Manager
Michael Dreyer	Foreman

On about May 18, 2004, the Respondent permanently laid off its employees Thomas Bennett, Patrick Dreyer, Leland Emery, William Hadrath, Allen Loehr, and Jeremy Walker.

The Respondent laid off these employees because they formed, joined, or assisted the Union, and engaged in concerted activities, and to discourage employees from engaging in those activities.

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All journeymen carpenters, utility carpenters, trainee/apprentices and helpers employed by the Employer at its Madison, South Dakota facility; excluding office clerical employees and guards and supervisors as defined in the Act.

On about September 30, 2003, the Respondent granted voluntary recognition to the Union as the exclusive collective-bargaining representative of the employees in the unit. This recognition is embodied in a recognition agreement signed by the Respondent's Owner Thomas Coburn on September 30, 2003.

At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

At all material times, the Union has requested that the Respondent recognize it as the exclusive collective-bargaining representative of the unit and bargain collectively with the Union as the exclusive collective-bargaining representative of the unit.

At all material times, the Respondent and the Union have been parties to a collective-bargaining agreement titled the East River South Dakota Agreement, effective from August 1, 2002, to April 30, 2004, which automatically renewed for an additional year from May 1, 2004, to April 30, 2005.

Since on about May 18, 2004, and continuing thereafter, the Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit by the following conduct:

(1) Since on about May 18, 2004, the Respondent has failed and refused to comply with the terms of the agreement referred to above, and has thereby repudiated its collective-bargaining agreement;

(2) On about May 18, 2004, the Respondent withdrew recognition of the Union as the exclusive collective-bargaining representative of its employees in the unit.

(3) The Respondent engaged in the permanent layoff of employees described above without affording the Union an opportunity to bargain with the Respondent with respect to the effects of the layoff.

The permanent layoff of employees described above relates to wages, hours, and other terms and conditions of employment of employees in the unit and is a mandatory subject for the purposes of collective bargaining.

#### CONCLUSIONS OF LAW

1. By permanently laying off employees Thomas Bennett, Patrick Dreyer, Leland Emery, William Hadrath, Allen Loehr, and Jeremy Walker because of their union and concerted activities, the Respondent has discriminated in regard to the hire or tenure or terms and conditions of employment of its employees, in violation of Section 8(a)(3) and (1) of the Act.

2. By, since on about May 18, 2004, failing and refusing to comply with the terms of its collective-bargaining agreement with the Union; withdrawing recognition from the Union; and permanently laying off employees without affording the Union an opportunity to bargain about the effects of the layoffs, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its unit employees, in violation of Section 8(a)(5) and (1) of the Act.

3. By the acts and conduct described above, the Respondent has been interfering with, restraining, or coercing employees in the exercise of the rights guaranteed in

Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(3) and (1) by permanently laying off employees Thomas Bennett, Patrick Dreyer, Leland Emery, William Hadrath, Allen Loehr, and Jeremy Walker, we shall order the Respondent to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The remedy for this violation would ordinarily also include an order requiring the Respondent to offer full reinstatement to the six discriminatees within 14 days from the date of our Order. The General Counsel, however, states in the complaint that "because Respondent closed its operations on a date sometime after May 18, 2004, no reinstatement is currently being sought for" the laid-off employees. Instead, the General Counsel seeks an order requiring the Respondent to reinstate the laid off employees if it resumes operations. Consistent with the General Counsel's request, we shall order the Respondent, in the event that it resumes operations, to offer employees Bennett, Dreyer, Emery, Hadrath, Loehr, and Walker full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.

The Respondent also shall be required to remove from its files all references to the unlawful layoffs of Bennett, Dreyer, Emery, Hadrath, Loehr, and Walker, and to notify them in writing that this has been done and that the layoffs will not be used against them in any way.

To remedy the Respondent's failure to bargain with the Union about the effects on unit employees of its decision to lay off unit employees Bennett, Dreyer, Emery, Hadrath, Loehr, and Walker, we shall order the Respondent to bargain with the Union, on request, about the effects of that decision. As a result of the Respondent's unlawful refusal to bargain, however, the laid-off unit employees have been denied an opportunity to bargain through their collective-bargaining representative. Meaningful bargaining cannot be assured until some

measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, we deem it necessary, in order to ensure that meaningful bargaining occurs and to effectuate the policies of the Act, to accompany our bargaining order with a limited backpay requirement designed both to make whole the employees for losses suffered as a result of the violations and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by ordering the Respondent to pay backpay to the laid off employees in a manner similar to that required in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968), as clarified by *Melody Toyota*, 325 NLRB 846 (1998).<sup>1</sup>

Thus, the Respondent shall pay its laid off employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the layoff on its employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within 5 business days after receipt of the Respondent's notice of its desire to bargain with the Union; or (4) the Union's subsequent failure to bargain in good faith.

In no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which they were laid off to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner. However, in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings which the laid-off employees would normally have received during the applicable period, less any net interim earnings, and shall be computed in accordance with *F.W. Woolworth Co.*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.

In addition, having found that the Respondent violated Section 8(a)(5) and (1) since May 18, 2004, by withdrawing recognition from the Union and by failing and refusing to continue in effect all the terms and conditions of the collective-bargaining agreement, we shall order

the Respondent to recognize and bargain with the Union and to apply the terms and conditions of the agreement for the time period before the Respondent closed its operations and in the event that the Respondent resumes operations. We also shall order the Respondent to make whole the unit employees for any loss of earnings and other benefits they may have suffered as a result of the Respondent's repudiation of its collective-bargaining agreement on about May 18, 2004, in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enf'd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, supra.

Further, in the event that the agreement provides for contributions to pension and benefit funds, we shall order the Respondent to make all contractually-required contributions to those funds that have not been made since May 18, 2004, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn.6 (1979). The Respondent shall also reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn.2 (1980), enf'd. 661 F.2d 940 (9th Cir. 1981).<sup>2</sup>

In view of the fact that the Respondent's facility is apparently closed, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of its former employees in order to inform them of the outcome of this proceeding.

#### ORDER

The National Labor Relations Board orders that the Respondent, Paragon Custom Homes, Inc., Madison, South Dakota, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Permanently laying off employees because they form, join, or assist a union, or engage in protected concerted activities.

(b) Failing and refusing to continue to recognize and bargain with Carpenters Union Local 587 as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All journeymen carpenters, utility carpenters, trainee/apprentices and helpers employed by the Employer at its Madison, South Dakota facility; excluding

<sup>1</sup> See also *Live Oak Skilled Care & Manor*, 300 NLRB 1040 (1990).

<sup>2</sup> To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes to the fund.

office clerical employees and guards and supervisors as defined in the Act.

(c) Failing and refusing to comply with the terms of its collective-bargaining agreement with the Union.

(d) Lay off unit employees without prior notice to the Union, and without affording the Union an opportunity to bargain concerning the effects of the layoff.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole Thomas Bennett, Patrick Dreyer, Leland Emery, William Hadrath, Allen Loehr, and Jeremy Walker for any loss of earnings and other benefits suffered as a result of their unlawful permanent layoffs, with interest, in the manner set forth in the remedy section of this decision.

(b) In the event that the Respondent resumes operations, offer Thomas Bennett, Patrick Dreyer, Leland Emery, William Hadrath, Allen Loehr, and Jeremy Walker full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.

(c) Within 14 days from the date of this Order, remove from its files all references to the unlawful layoffs of Thomas Bennett, Patrick Dreyer, Leland Emery, William Hadrath, Allen Loehr, and Jeremy Walker, and within 3 days thereafter, notify them in writing that this has been done and that the unlawful layoffs will not be used against them in any way.

(d) Recognize and bargain in good faith with Carpenters Union Local 587 as the exclusive representative of the unit employees, and comply with the terms of its collective-bargaining agreement with the Union for the time period before the Respondent closed its operations and in the event that the Respondent resumes operations.

(e) Make whole the unit employees for any loss of earnings and other benefits they may have suffered as a result of its failure, since about May 18, 2004, to comply with the provisions of the collective-bargaining agreement, with interest, as set forth in the remedy section of this decision.

(f) Make all fund payments required by the collective-bargaining agreement that have not been made since about May 18, 2004, and reimburse unit employees for any expenses ensuing from its failure to make the required payments, in the manner set forth in the remedy section of this decision.

(g) On request, bargain with the Union over the effects on unit employees of the permanent layoffs of Thomas

Bennett, Patrick Dreyer, Leland Emery, William Hadrath, Allen Loehr, and Jeremy Walker, and put in writing and sign any agreement reached as a result of such bargaining.

(h) Pay to the unit employees their normal wages for the period set forth in the remedy section of this decision.

(i) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(j) Within 14 days after service by the Region, duplicate and mail, at its own expense, and after being signed by the Respondent's authorized representative, signed and dated copies of the attached notice marked "Appendix"<sup>3</sup> to the Union and to all unit employees employed at the Respondent's Madison, South Dakota facility on or after May 18, 2004.

(k) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. October 29, 2004

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Robert J. Battista,	Chairman
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Wilma B. Liebman,	Member
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Dennis P. Walsh,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD  
 APPENDIX  
 Notice to Employees  
 Mailed by Order of the  
 National Labor Relations Board  
 An Agency of the United States Government

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<sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Mailed by Order of the National Labor Relations Board" shall read "Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to mail and obey this notice.

**FEDERAL LAW GIVES YOU THE RIGHT TO**

- Form, join or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT permanently lay off employees because they form, join, or assist a union, or engage in protected concerted activities.

WE WILL NOT fail and refuse to continue to recognize and bargain with Carpenters Union Local 587 as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All journeymen carpenters, utility carpenters, trainee/apprentices and helpers employed by us at our Madison, South Dakota facility; excluding office clerical employees and guards and supervisors as defined in the Act.

WE WILL NOT fail and refuse to comply with the terms of our collective-bargaining agreement with the Union.

WE WILL NOT lay off unit employees without prior notice to the Union, and without affording the Union an opportunity to bargain concerning the effects of the lay-off.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make whole Thomas Bennett, Patrick Dreyer, Leland Emery, William Hadrath, Allen Loehr, and Jeremy Walker for any loss of earnings and other benefits suffered as a result of their unlawful permanent layoffs, with interest.

WE WILL, in the event that we resume operations, offer Thomas Bennett, Patrick Dreyer, Leland Emery, William

Hadrath, Allen Loehr, and Jeremy Walker full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.

WE WILL, within 14 days from the date of the Board's Order, remove from our files all references to the unlawful layoffs of Thomas Bennett, Patrick Dreyer, Leland Emery, William Hadrath, Allen Loehr, and Jeremy Walker, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the unlawful layoffs will not be used against them in any way.

WE WILL recognize and bargain in good faith with Carpenters Union Local 587 as the exclusive representative of the unit employees, and comply with the terms of our collective-bargaining agreement with the Union for the time period before we closed our operations and in the event that we resume operations.

WE WILL make whole the unit employees for any loss of earnings and other benefits they may have suffered as a result of our failure, since about May 18, 2004, to comply with the provisions of the collective-bargaining agreement, with interest.

WE WILL make all fund payments required by the collective-bargaining agreement that have not been made since about May 18, 2004, and reimburse unit employees for any expenses ensuing from our failure to make the required payments.

WE WILL, on request, bargain with the Union over the effects on unit employees of the permanent layoffs of Thomas Bennett, Patrick Dreyer, Leland Emery, William Hadrath, Allen Loehr, and Jeremy Walker, and put in writing and sign any agreement reached as a result of such bargaining.

WE WILL pay our unit employees further limited back-pay in connection with our failure to bargain over the effects of the layoffs of the above-named employees, as required by the Decision and Order of the National Labor Relations Board.

PARAGON CUSTOM HOMES, INC.